

The substantial support tests of section 170(b)(1)(A)(vi) of the Code also apply to allow an organization organized and operated exclusively for the benefit of a state university, otherwise described in section 170(b)(1)(A)(iv), to meet the substantial support test of section 170(b)(1)(A)(iv), provided the sources of support of the organization do not include support from sources permitted by section 170(b)(1)(A)(vi), but not permitted by section 170(b)(1)(A)(iv).

ISSUE

May an organization, which is otherwise described in section 170(b)(1)(A)(iv) of the Internal Revenue Code, qualify as other than a private foundation under section 509(a)(1) as an organization described in section 170(b)(1)(A)(iv) if it meets the financial support requirements promulgated in the Income Tax Regulations under section 170(b)(1)(A)(vi)?

FACTS

An organization, which is exempt from federal income tax under section 501(c)(3) of the Code and is organized and operated exclusively for the benefit of a state university, seeks to establish that it is not a private foundation within the meaning of section 509(a) because it is described in sections 509(a)(1) and 170(b)(1)(A)(iv).

LAW AND ANALYSIS

Organizations described in either clause (iv) or clause (vi) of section 170(b)(1)(A) of the Code are excluded from the definition of a private foundation under section 509(a)(1).

Section 170(b)(1)(A)(iv) of the Code describes organizations that are organized and operated for the benefit of certain state and municipal colleges and universities and that normally receive a substantial part of their support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 509(a)) from the United States or any state or any political subdivision thereof or from direct or indirect contributions from the general public.

Section 1.170A-9(b)(2) of the Income Tax Regulations provides that an organization is described in section 170(b)(1)(A)(iv) of the Code if it normally receives a substantial part of its support from the United States or any state or political subdivision thereof or from direct or indirect contributions from the general public, or from a combination of two or more of these sources.

Section 170(b)(1)(A)(vi) of the Code describes organizations that are organized and operated exclusively for charitable

purposes and that normally receive a substantial part of their support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public.

Section 170(c)(1) of the Code refers to the following governmental units: a state, a possession of the United States, or any political subdivision of the foregoing, or the United States or the District of Columbia. Thus, the permitted sources of support for organizations described in section 170(b)(1)(A)(vi) are broader than the permitted sources of support for organizations described in section 170(b)(1)(A)(iv).

Section 1.170A-9(e) of the regulations describes detailed tests for determining when an organization receives a substantial part of its support from permitted sources described in section 170(b)(1)(A)(vi) of the Code.

Section 170(b)(1)(A)(iv) and (vi) of the Code both require that organizations normally receive a substantial part of their support from designated sources. Because both clauses contain this substantial support requirement, the substantial support tests for section 170(b)(1)(A)(vi) organizations also apply to allow organizations otherwise described in section 170(b)(1)(A)(iv) to meet the substantial support test of section 170(b)(1)(A)(iv), provided the sources of support of the organization do not include support from sources permitted by section 170(b)(1)(A)(vi) but not permitted by section 170(b)(1)(A)(iv).

HOLDING

An organization, which is otherwise qualified for the classification, may qualify as other than a private foundation under section 509(a) of the Code as an organization described in section 170(b)(1)(A)(iv) if it meets the financial support requirements promulgated in the Income Tax Regulations under section 170(b)(1)(A)(vi) because of governmental support it receives from the United States or any state or political subdivision thereof or direct or indirect contributions from the general public.

However, an organization that fails to meet the specific financial support requirements of section 170(b)(1)(A)(vi) may still qualify for classification under section 170(b)(1)(A)(iv) if it meets the general requirements thereunder and the support requirements of section 1.170A-9(b)(2)(ii) of the regulations.